

PT 01-16

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

KANKAKEE COMMUNITY)		
DEVELOPMENT CORP.)	A.H. Docket #s	99-PT-0044
Applicant)		99-PT-0018
)	Docket #s	99-46-12
v.)		98-46-20
)	Parcel Index #s	09-32-427-003-0090
THE DEPARTMENT OF REVENUE)		16-9-32-427-012-0061
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Charles O. Henry, attorney at law appeared on behalf of Kankakee Community Development Corporation and Ms. Brenda L. Gorski, assistant state's attorney of Kankakee County appeared on behalf of the Board of Review of Kankakee County.

Synopsis:

The hearing in these matters was held at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, on July 12, 2000, to determine whether or not the Kankakee County parcels here in issue qualified for exemption from real estate taxation for all or part of the 1999 or 1998 assessment years, respectively.

Ms. Patricia M. Hudson, Executive Director of the Kankakee Community Development Corporation (hereinafter referred to as the "Applicant"), was present and testified on behalf of the applicant.

Administrative Hearings Docket No. 99-PT-0044 identified as Illinois Department of Revenue (hereinafter referred to as the “Department”) Docket No. 99-46-12 concerns Kankakee County Parcel Index No. 09-32-427-003-0090, which during 1998 and 1999 was improved, with the former National Guard armory. During 1998 and 1999 the applicant was in possession of this parcel and the armory located thereon pursuant to a contract for deed from Central Parking Corporation as beneficiary under First of America Bank Land Trust #5368, as seller, and the applicant, as purchaser. The applicant was in possession of the parcel here in issue and the building thereon during the entire 1998 and 1999 assessment years.

Administrative Hearings Docket number 99-PT-0018, identified as Department Docket No. 98-46-20 concerns Kankakee County Parcel Index No. 16-9-32-427-012-0061 which is improved with a paved parking lot. During 1998 the applicant was in possession of this parcel and the parking lot thereon pursuant to a contract for deed from Lecour and Irene E. Roy, as Co-Trustees of The Lecour and Irene E. Roy Trust dated April 23, 1992, as sellers, and the applicant, as purchaser. The applicant was in possession of the parcel here in issue and the paved parking lot thereon during the entire 1998-assessment year.

The issues in these matters include: whether the applicant is a charitable organization; secondly, whether the applicant owned these parcels for real estate tax exemption purposes for the 1998 and 1999 assessment years; and finally, whether the applicant used these parcels for primarily charitable or exempt purposes during the 1998 and 1999 assessment years.

Following the submission of all of the evidence and a review of the record, it is determined that the applicant is a charitable organization. It is also determined that the applicant owned these parcels for real estate tax exemption purposes during the 1998 and 1999 assessment years. It is further determined that these parcels were used for primarily charitable or exempt purposes during the 1998 and 1999 assessments years.

It is therefore recommended that Kankakee County Parcel Index Nos. 09-32-427-003-0090 and 16-9-32-427-012-0061 be exempt from real estate taxes for the 1999 and 1998 assessment years, respectively.

Findings of Fact:

1. The jurisdiction and position of the Department in these matters, namely that these parcels were not in exempt ownership and not in exempt use during the 1999 and 1998 assessment years, respectively, was established by the admission in evidence of Department's Exhibit Nos. 1 through 6A.

2. The applicant acquired possession of Kankakee County Parcel Index No. 09-32-427-003-0090, pursuant to a contract for deed dated May 1, 1997, with Central Parking Corporation, as beneficiary of First of America Bank Land Trust #5368, as seller, and the applicant, as buyer. This parcel is improved with the former National Guard Armory. (Dept. Ex. No. 2B)

3. The applicant acquired possession of Kankakee County Parcel Index No. 16-9-32-427-012-0061, pursuant to a contract for deed dated September 27, 1996, with Lecour and Irene E. Roy as Co-Trustees of The Lecour and Irene E. Roy Trust dated April 23, 1992, as seller and the applicant, as buyer. This parcel is improved with a paved parking lot. (Dept. Ex. No. 2I)

4. The parking lot parcel was conveyed by Mr. and Mrs. Roy to the applicant and the deed was recorded on December 22, 1999. The parcel improved with the armory was conveyed by the trust to the applicant on April 7, 2000. Consequently the applicant held legal title to both parcels on the date of the hearing in these matters. (Tr. pp. 20 & 21, Dept. Ex. Nos. 2C & 2K)

5. The applicant was incorporated on April 4, 1990, pursuant to the General Not For Profit Corporation Act of Illinois for purposes including the following:

To be operated exclusively for charitable or educational purposes, including but not limited to the following purposes:

1. To combat community deterioration, poverty, racial discrimination and prejudice; to reduce neighborhood tension; to relieve the poor, distressed and underprivileged of the city of Kankakee; . . .
3. To conduct activities to achieve charitable and educational objectives within the City of Kankakee, including residential rehabilitation and commercial area revitalization, development of health, social service and recreational facilities, and providing other social services and counseling; . . . (Dept. Ex. No. 2M)

6. The Articles of Incorporation of the applicant were amended on March 13, 1995. The purpose clause of the amended Articles of Incorporation reads as follows:

The Kankakee Community Development Corporation is organized exclusively for charitable, education, religious, or scientific purposes within the meaning of section 501(c)(3) of the Internal Revenue Code. (Dept. Ex. No. 2N)

7. Kankakee County Parcel No. 09-32-427-003-0090, during 1998 and 1999 was improved with the former National Guard Armory. This building is now known as the Kankakee Community Resource Center. On the main floor of this building located across the front are a room used for homework and the Micro classes, a youth program office, the applicant's office, a conference room, a computer lab, a men's bathroom, and a women's bathroom. Behind these rooms on the main floor is the gymnasium. There is a partial basement under the building which contains a craft/sewing room and several storage rooms. There also is a second floor over the back of the building which contains a large meeting room with a stage at one end known as the Charlton Room, a kitchen, and another computer lab. (Appl. Ex. No. 2)

8. Applicant's financial statement showed that the applicant received \$56,424.00 in contributions, grant revenue of \$99,992.00, rental income of \$24,683.00, and fundraising income of \$34,483.00 during the 1999-assessment year. During 1998, the applicant received \$42,606.00 in contributions, grant revenue of \$99,018.00, rental income of \$34,823.00, and fundraising income of \$12,857.00. (Appl. Ex. No. 31)

9. During 1998 and 1999 the applicant received funds from Community Development Block Grants to operate the Micro Enterprise self-employment classes, the computer classes, and the youth programs. The applicant also received funds during those years from the State of Illinois Department of Children and Family Services, the Department of Human Resources, and private donations. (Tr. pp. 16 & 17)

10. During 1998 and 1999 the fees for the Micro Enterprise self-employment classes and the computer classes conducted by the applicant were one dollar per session. Most of the participants did not have the dollar and the applicant waived the fee. (Tr. p. 19)

11. The grant that funds the Micro Enterprise self-employment classes comes from the United States Department of Housing and Urban Development (hereinafter referred to as “HUD”). The HUD grant for this program requires that 75% of the participants in this program must be people with low to moderate incomes pursuant to HUD guidelines. The other 25% of the persons in this program may be anyone who wishes to apply. The applicant has never limited the number of persons that it serves under this program. (Dept. Ex. Nos. 2AD & 2AH, Tr. pp. 35-38)

12. During 1998 and 1999, the after school program included recreation and games in the full sized gymnasium as well as work in the computer lab and tutoring if it was needed. No fee was charged for that program and it was open to anyone who wished to attend. During those years, there was no limit on the number who could attend. (Dept. Ex. Nos. 2AC, 2AF, & 2AG, Tr. pp. 41-46)

13. During 1998 and 1999, the summer youth program was provided to the participants at no cost and there was no limit on the number who could attend. (Tr. pp. 42-46)

14. In establishing its rates for the rental of the various areas in the building on this parcel, the applicant called around to agencies with similar facilities. The applicant purposely set its rental fee scale lower than the going rate in the area. (Tr. pp. 54 & 55)

15. The policies and procedures for facilities rental adopted by the applicant on July 15, 1993, includes one which provides, "to make the facilities available to community groups on a sliding scale basis when they are unable to pay the regular rental rates." (Appl. Ex. No. 18)

16. The aforesaid policies and procedures for facilities rental adopted by the applicant after setting forth the rental rates for the various areas of the building, states as follows:

In certain instances, the rates may be reduced or waived by the Kankakee Community Development Corporation Board or their designated management representative if it is determined that this is appropriate to meet other primary objectives of the Community Resource Center Mission.

17. The applicant allows educational, recreational, and community groups to use the

building. Approximately one-half of those organizations are able to pay the suggested rental rate or a reduced rent. The remaining organizations are allowed to use the building at no cost in accordance with the above stated provision of the Policies and Procedures. (Tr. pp. 55-61, Dept. Ex. No. 2R, Appl. Ex. No. 18)

18. During 1999 the applicant only entered into four formal written rental agreements with groups using the building. One was for the use of the Charlton Room for a rental fee of \$25.00 for four hours for the Kankakee Kultivators. A second rental agreement was executed with the group the Heavenly Band for a gospel concert in the gym for a rental fee of \$25.00 per hour for 4½ hours. The last two rental agreements were executed with two different indoor circuses which each used the building for a twelve hour period for a rental fee of \$500.00 each. (Tr. p. 24, Appl. Ex. Nos. 23, 24, 25, & 26)

19. The applicant has been determined to be exempt from Federal Income Tax pursuant to Internal Revenue Code section 501(c)(3). The applicant has also been determined to be exempt from Illinois Retailers' Occupation Tax and related laws. (Tr. p. 18)

20. The applicant does not pay the members of its board of directors for serving on that board. The applicant does not have any stock or stockholders. (Tr. pp. 25 & 26)

21. During the 1998-assessment year, the applicant had possession of the paved parking lot located on Kankakee County Parcel Index No. 16-9-32-427-012-0061 pursuant to the contract for deed from Lecour and Irene E. Roy to the applicant. This parking lot is contiguous to the former National Guard Armory located on Kankakee County Parcel Index No. 09-32-427-003-0090 which was in possession of the applicant during 1998 pursuant to the contract for deed from First of America Bank Land Trust #5368 to the applicant. During 1998 the parking lot was not fenced but there were parking blocks around the border of the lot except on the side where the former armory was located. The entrance to the parking lot was next to the former armory on Indiana Street and the exit was on the other side of this parcel into the alley. During 1998 the parking lot was primarily used by persons going to the former armory to participate in the applicant's various programs. (Tr. pp. 20, 78, & 79)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Concerning charitable organizations, 35 **ILCS** 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States....

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

It should be pointed out that to qualify for an exemption from taxation as a charity, the applicant must demonstrate that there is ownership by a charitable organization and use for charitable purposes. Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763 (4th Dist. 1987); and Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978).

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down five guidelines to be used in determining whether or not an organization is charitable. Those five guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; and (5) no obstacles are placed in the way of those seeking the benefits. Since during 1998 and 1999 the applicant waived or reduced both admission and rental fees in cases of need, I conclude that charity was dispensed to all who needed and applied for it, and no obstacles were placed in the way of those seeking the benefits. In view of the fact that to date the applicant has not limited the size of its classes or youth programs, I conclude that the benefits derived are for an indefinite number of persons. Since the applicant is organized under the General Not for Profit Corporation Act and has no stock or stockholders, I conclude that the applicant has no capital, capital stock, or shareholders, and does not profit from the enterprise. The applicant's funds, I conclude are primarily derived from private and public charity and fund raisers and are held in trust for the objects and purposes expressed in its charter. Consequently, I conclude that the applicant is a charitable organization.

In the case of Christian Action Ministry v. Department of Local Government Affairs, *supra*, the Court determined that an organization purchasing a property pursuant to a contract for deed is the owner of the property for the purposes of determining whether the property qualifies for a property tax exemption. I therefore conclude that since the applicant during both 1998 and 1999 was the purchaser of each of these parcels pursuant to a contract for deed, the applicant was the owner of each of these parcels for real estate tax exemption purposes.

Concerning the rental of the former armory building, in view of the fact that the applicant waived or reduced rental fees for prospective renters who met applicant's charitable objectives I conclude that the applicant used the building for primarily charitable purposes. Only two rentals during 1999, namely the two one-day rentals to the indoor circuses may not have qualified as

being for charitable purposes. However these uses were merely incidental. Where as here, the building was used for both exempt and non-exempt purposes, it will qualify for exemption if the exempt use is the primary use and the nonexempt use is merely incidental. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971) and also MacMurray College v. Wright *supra*.

Concerning parking areas, 35 **ILCS** 200/15-125 provides as follows:

Parking areas, not
leased or used for profit,
when used as a part of a use
for which an exemption is
provided by this Code and
owned by any school
district, non-profit
hospital, school, or
religious or charitable
institution which meets
the qualifications for
exemption are exempt.

Based on the foregoing findings of fact concerning the parking lot, I conclude that the parking lot meets the qualifications of 35 **ILCS** 200/15-125.

I therefore recommend that Kankakee County Parcel Index No. 09-32-427-003-0090 and the building thereon be exempt from real estate taxation for the 1999-assessment year.

I also recommend that Kankakee County Parcel Index No. 16-9-32-427-012-0061 and the parking lot thereon be exempt from real estate taxation for the 1998-assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
January 9, 2001